

5th : K.D. Long
Plaintiff
Sworn on 8th October 1987

IN THE HIGH COURT OF JUSTICE

1987 C No. 6140

CHANCERY DIVISION

B E T W E E N :

CHURCH OF SCIENTOLOGY OF CALIFORNIA

Plaintiff

-and-

(1) RUSSELL MILLER
(2) PENGUIN BOOKS LIMITED

Defendants

A F F I D A V I T

I, KENNETH DAVID LONG of 1301 North Catalina, Los Angeles, California 90027, United States, an Executive employed in the Legal Division of the Church of Scientology of California, MAKE OATH and say as follows:-

1. This affidavit is supplemental to my previous affidavits filed with this Court.
2. I have read Jonathan Caven-Atack's Third Affidavit and Mr Miller's supplemental affidavit filed with this Court yesterday, October 7, 1987.

3 Mr Caven-Atack conveniently changes his testimony of his previous affidavits and now states that he received copies of the documents from a Brenda Yates who had been given the task of making photocopies of documents in possession of Mr Armstrong's lawyer.

4 Mr Miller in his supplemental affidavit now claims, at this late hour, that he "misunderstood" how Mr Caven-Atack obtained copies of the documents. These inconsistent and last minute changes are simply an attempt to create confusion and doubt with this Court.

5 Mr Caven-Atack and Mr Miller's latest affidavits lack, as did their previous affidavits, specific facts. They still fail to identify which documents were obtained from Mrs Yates. Also, they still remain silent regarding how they obtained the documents that remained sealed during the entire course of the Armstrong trial and were never made exhibits.

6 I have read the affidavit of Earle C. Cooley dated October 8, 1987. In regard to paragraph 4 of this affidavit, I can say, based on my being in Court every day of the Armstrong trial, that none of these documents in question in this case were publicly available during the course of the trial. There were over 100 exhibits that were publicly available and not subject to any sealing order but none of these documents are included in this case and none

of them were LRH archive documents. The truth is that the documents in question were sealed throughout the entire Armstrong trial and remain sealed to this day.

7. Produced and shown before me now is exhibit "KDL 36" a true and correct copy of the affidavit of Gerald Armstrong of March 7, 1986. Mr Armstrong himself testified the following: "CSC (Church of Scientology California) sued me in August 1982 in the Los Angeles Superior Court and the documents I had sent my attorneys were ordered to be delivered to the Court where they were put under seal. Mary Sue Hubbard entered the case, hereinafter referred to as (Armstrong), as Plaintiff in Intervention in late 1982. The case went into trial in 1984 and several of the sealed documents were admitted into evidence as defense exhibits 500A-500JJJJJJ. A Judgment was entered in my favour. The exhibits and other biography documents remain under seal pending the outcome of an appeal taken by plaintiff."

The appeal referred to by Mr Armstrong is still pending in California.

8. During the course of the Armstrong trial and up until this day the Armstrong documents have been effectively under seal and protected by various Court Orders in the United States. Mr Flynn was permitted by the trial Court to use the documents only for the purpose of the Armstrong case and only during the pendency of those proceedings. The trial

court, in a 23 April 1984 hearing, specifically stated how these documents were to be treated:

"MR LITT: (Church attorney) We would also like -- Mr Flynn has not had access to these documents, assuming that the Court is now allowing him to go into them, we also would like an order that requires that he has seen these materials under seal. He may not disclose the materials or the contents of the materials for any purpose outside of the use in this proceeding. That is the order that exists presently with respect to Counsel.

"THE COURT: I don't have any problem with that, at least until the Court decides what to do with these exhibits."

"MR FLYNN: I essentially have no quarrel with that."

The Court also stated:

"THE COURT: Well, I will accept the representation by Mr Flynn that he is not going to do anything of an untoward (sic) nature that would violate the theory and the principles of what we are trying to deal with here. He is subject to the protective order.

"... and he is not to -- during the pendency of these proceedings, until further order discuss or disseminate to

other people, other than people like his client or in Court here, matters contained in the sealed records which were not in the public domain before Mr Armstrong first went to Mr Flynn or Miss Dragojevic, her firm."

9. Produced and shown before me now is exhibit "KDL 37", a July 31, 1986 declaration of Mr Michael Flynn filed in another Church case. In the case, Mr Flynn was being accused of giving out Armstrong documents to a media outlet.

Mr Flynn stated:

"In this case, of course, when we do not possess the (Armstrong Documents) it would be impossible for us to sell sealed documents to (Der Spiegel)."

10. Produced and shown before me now is exhibit "KDL 38", a true and correct copy of portions of deposition transcript of a Mr Homer Shomer, taken on 23 April 1985. Ms Julia Dargojevic, who was also trial Counsel for Mr Armstrong and who worked closely with Mr Flynn, stated:

"MS. DRAGOJEVIC: Okay. The other thing I wanted to say is that simply by turning over these documents doesn't mean we're limiting ourselves because we consider that a number of documents which were used in the Armstrong case would be applicable to this Request for Production. Unfortunately, those documents are under seal for the present, and there's nothing I can do about producing them."

11. As has been clearly shown by the facts above, Mr Armstrong and Mr Flynn testified that they have complied with the Court Orders sealing the documents in question. If Mrs Yates got the documents from Mr Flynn as Mr Miller testifies she did, or from anyone else, she did so in violation of Court Orders and also in Breach of Confidence.

12. Obviously, if Mrs Yates would have legally had the Armstrong documents in her possession, she would have distributed them the same way she distributed the trial transcripts. In Mr Miller's affidavit, he states that Mrs Yates was to "copy and immediately" distribute the documents obtained from Mr Flynn. As is shown by the facts below, Mrs Yates only distributed the trial transcripts.

13. Produced and shown before me now is exhibit "KDL 39" which is a true copy of several pages from a July/August 1984 publication entitled "The Journal of the Advanced Ability Center." Contained in the classified section of this publication is an advertisement from Brenda Yates offering for sale copies of the Armstrong Trial Transcripts. Nowhere in the ad does Mrs Yates offer the Armstrong documents which would obviously be of more interest to potential buyers than just the trial transcript.

14. Produced and shown before me now is exhibit "KDL 40" a true copy of the January/February 1985 edition of "The Journal of the Advanced Ability Center." Mrs Yate's ad

appears again in the classified section. As the Court can see there is no mention of any Armstrong documents for sale.

15. After reviewing all the facts put forth by the Plaintiff and after reading the inconsistent affidavits of Mr Miller and Mr Atack, there is no doubt that the documents in question in the suit were improperly obtained in violation of Court Orders and in Breach of Confidence.

The Church does not want to prevent the publication of Mr Miller's book, we just want the parts of the book taken from the documents in question removed and our copyright rights in the photographs protected.

SWORN at 23/28 Fleet St)
London EC4)
this 8th day of October 1987)

Kenneth David Long

Before me,

Mark W. L. Cook

A SOLICITOR

*Mark Cooksley
Solicitor of the
Supreme Court*